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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,766	09/17/2003	Ellis B. Nary	NEB-10002/02	4138
25006 7590 09/14/2004				
GIFFORD, KRASS, GROH, SPRINKLE ANDERSON & CITKOWSKI, PC 280 N OLD WOODARD AVE SUITE 400 BIRMINGHAM, MI 48009				
EXAMINER KIM, CHRISTOPHER S				
ART UNIT 3752				
PAPER NUMBER				
DATE MAILED: 09/14/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/664,766	Applicant(s) NARY, ELLIS B.	
	Examiner Christopher S. Kim	Art Unit 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2003.
- 2a) ☐ This action is FINAL.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/18/03</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the other end" in line 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 1 recites the limitation "said other end" in lines 8-9. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the air" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the surface" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the water" in lines 2-3. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the pool" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the wall" in 8. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the other end" in line 11. There is insufficient antecedent basis for this limitation in the claim.

Regarding claims 1 and 12, it is uncertain whether applicant is claiming the combination of a fountain, pool and water or the subcombination of a fountain. The preamble of the claims recite a "fountain", the but the body of the claims recite limitations directed to the pool and water level.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Williams (3,318,528).

Williams discloses a fountain comprising: a vertical 45; a horizontal water conduit (portion of conduit 45 connected to receptacle 17); a brace 47; a fountainhead 23.

5. Claims 1, 12 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Vickroy (2,621,968).

Vickroy discloses a fountain comprising: a support structure T; a horizontal water conduit 12; a brace member M; a fountainhead S.

6. Claims 1-5 and 11-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gellmann (3,121,235).

Gellmann discloses a fountain comprising: a support structure 16; a horizontal water conduit 12; a brace member 48; a fountainhead (20 or 60); valve means 64.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gellmann (3,121,235).

Gellmann discloses the limitations of the claimed invention with the exception of the valve means being positioned in the horizontal water conduit. Providing the valve means in the horizontal water conduit is a mere relocation of parts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to position the valve means in the horizontal water conduit, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (703)

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308-8336. The examiner can normally be reached on Monday - Thursday, 6:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (703) 308-2087. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Christopher S. Kim  
Primary Examiner  
Art Unit 3752

CK